

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-018673

05/05/2005

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
K. Ballard
Deputy

FILED: 05/09/2005

BARRY DAVIS

GEOFFREY M TRACHTENBERG

v.

REBECCA PATTON, et al.

PETER A BOYLE

RULING/JUDGMENT SIGNED

The Court has reviewed Plaintiff's Motion for Costs and Fees and the briefs. With respect to Plaintiff, Rule 76(f) does not apply. This is a Rule 68 case of an accepted settlement offer. Acceptance of an Offer of Judgment is not an adjudication on the merits. This distinguishes it from the *trial de novo* envisioned by Rule 76(f). *4501 Northpoint LP v. Maricopa County*, 209 Ariz. 569 ¶8, 445 Ariz.Adv.Rep. 17 ¶8 (App. 2005). Thus, how it compares with the arbitration award is immaterial. The Court does not know whether the terms of the offer included costs and/or attorney's fees. The general rule is that costs are recoverable, but attorney's fees are not in a tort action such as this. Neither is deemed included in the settlement amount, absent agreement to the contrary. *See Hales v. Humana of Arizona, Inc.*, 186 Ariz. 375, 377 (App. 1996).

THEREFORE, IT IS ORDERED:

- 1) Denying Plaintiff's Motion for Costs and Fees.
- 2) Denying Defendants' Request for Sanctions.
- 3) Filing Defendants' proposed Order regarding sanction unsigned.
- 4) Approving and settling the formal written Judgment in favor of Plaintiff Barry Davis and against Defendant Rebecca Patton, modified consistent with the above, and signed by the Court on May 4, 2005, filed (entered) by the clerk on May 5, 2005.